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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/777,614	02/05/2001	Christopher P. Bergh	10235-048001	6722
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EXAMINER				
ALVAREZ, RAQUEL				
ART UNIT		PAPER NUMBER		
3682				
NOTIFICATION DATE		DELIVERY MODE		
05/20/2011		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

Office Action Summary**Application No.**

09/777,614

Applicant(s)

BERGH ET AL.

Examiner

RAQUEL ALVAREZ

Art Unit

3682

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 4/20/2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-29, 31-38 and 44-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-29, 31-38 and 44-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ ~~Notice of Informal Patent Application~~
- 6) ☐ Other: _____

DETAILED ACTION

1. This office action is in response to communication filed on 4/20/2011.
2. Claims 17-29, 31-38 and 44-50 are presented for examination.

Claim Objections

3. Applicant is advised that should claims 48-50 be found allowable, claims 49-50 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 17-29, 31-38 and 44-46, 48-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benthin al. (2002/0035568 hereinafter Benthin) in view of Langseth et al. (6,694,316 hereinafter Langseth).

With respect to claims 17, 19-20, 25-27, 31, 33, 35-36, 44 Benthin teaches a computer-controlled method for managing and distributing offers (abstract).

Producing a plurality of marketing campaign each comprising a plurality of offers selected from a set of offers to send to multiple targeted individuals with the offers to selected by one or more computers for each of the plurality of marketing campaigns specified by offer data processing rules, executed by the one or more computer, from which one or more of the offers are identified for targeting specific individuals and delivering the offers based on execution of time based rules (i.e. controlling the presentation of when and what type of offers to transmit to the customers, paragraphs 0031 and 0041 teaches automatic offers that are presented right away; paragraph 0030 teaches presenting the offers if it fit the customer profile and paragraph 0024 teaches the customer clicking on ads to determine which campaign of offers to present to the customer)(see also Figure 1);

With respect to the newly amended feature of delivering the offers over channels to specific, targeted individuals of the multiple targeted individuals and the allocation of the offers to the channels based on the determined allocation in each of the marketing campaign with the channels being one of a plurality of different types of delivery channels. Langseth teaches selecting the advertisements or offers based on the capability of the channels to the selected offers. Langseth teaches selecting from a plurality of channels which advertisements to place based on the channel capacity and content of the channel. Langseth, clearly teaches in step 928, the advertisements being selected based on the channel being run or the capacity of the channel. Each channel accommodates or is capable of outputting different types of ads. For example, a golf site may only enable access to a sports channel. It would have been obvious to a

person of ordinary skill in the art at the time of Applicant's invention to have included in the system of Benthin the teachings of Langseth of delivering the offers over channels to specific, targeted individuals of the multiple targeted individuals and the allocation of the offers to the channels based on the determined allocation in each of the marketing campaign with the channels being one of a plurality of different types of delivery channels because such a modification would **"provide a readable available medium for delivery of the right information at the right time"** (Langseth col. 3, lines 6-10).

Claims 18, further recite determining a channel to select based on user response to an offer and delivering targeted information to the individual based on the information. Official Notice is taken that it is old and well known in marketing to determine how well users response to ads on TV versus ads in the radio in order to select how the ads are going to be delivered based on the user's responses. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included determining a channel to select based on user response to an offer in order to allow the advertisers to determine the best delivery medium.

Claims 23-34 and 34 as amended further recite timing and targeting the specific information to the individual according to the accepted information. Official Notice is taking that it old and well known to keeping track of coupons, of when and which offers are redeemed by the individual users in order to target subsequent coupon sets to the individuals. It would have been obvious to a person of ordinary skill in the art at the time

of Applicant's invention to have included timing and targeting the specific information to the individual according to the accepted information in order to obtain the above mentioned advantage.

Claims 21-22, 37-38 further recite the capacity of the channels being related to the monetary cost of the channel. Official notice is taken that it is old and well known for monetary and operating cost being related to the capacity of the channels. For example, CNN will have a higher capacity than a local smaller channel with a smaller budget. It would have been obvious to have included the capacity of the channels being related to the monetary cost of the channel because such a modification would allow the channels to invest and better maintain the channels in order to have a higher chances of being selected.

With response to claims 28-29, 32 and 45-46, Benthin further teaches reporting the effectiveness of the plurality of offers and presenting a sequence of related offers to those individuals based on the individuals activities (i.e. tracking offers effectiveness in order to further target further offers to the individuals)(paragraphs 0082-0088).

With respect to the newly amended feature of delivering through the channels subsequent offers based on the tracked activities. Langseth teaches delivering through a plurality of channels. It would have been obvious to include the teachings of Langseth which teaches delivering through a plurality of channels into the teachings of Benthin

which teaches tracking effectiveness of the offers in order to determine which medium/channel is most favorable to the individual.

With respect to claims 48-50, Benthin further teaches wherein at least one of the offer data processing rules being a set of time based rules, the time based rules including at least one of a direct rule that immediately instantiates offers based on an offer campaign, a triggered rule that instantiates offers based on the occurrence of particular conditions, and a staged rule that instantiates offers based on user interaction with previous offers; and wherein selecting further comprises: selecting one of the offers based on execution of one of the time based rules (Benthin clearly teaches different times to present the offers such as certain offers are presented right away, equivalent to Applicant's direct rule (i.e. specify the content to be automatically present the customer on paragraph 0031), other offers are presented based on the timing of certain conditions, such as the user clicking on certain ads, equivalent to Applicant's triggered rule (i.e. clicking on a link on paragraph 0024) and in addition certain offers presented in stages such as building a customer profile and then presenting different offers to the customers, equivalent to Appellant's staged rule (i.e. offers based on customer's profile, paragraph 0024).

Response to Arguments

6. The Double Patenting rejection has been withdrawn.
7. Applicant argues that Benthin doesn't delivering the offers over channels to specific, targeted individuals.....the channels and time of delivery...based on execution

of time based rules and the allocation of the offers to the channels based on the determined allocations in each of the marketing campaigns with the channels beingdifferent types of delivery channels. The Examiner wants to point out that the claims were rejected under Benthin in view of Langseth and therefore should be argued accordingly. Benthin teaches a plurality of marketing campaign. The delivery of the offers being based on individual characteristics and event based rules. Since "time based rules" is broader than "clock based rules". Time based could be related to event based rules and is taught by Benthin. Langseth on the other hand, teaches selecting from a plurality of channels which advertisements to place based on the channel capacity and content of the channel. Langseth, clearly teaches in step 928, the advertisements being selected based on the channel being run or the capacity of the channel. Each channel accommodates or is capable of outputting different types of ads. Therefore the combination of Benthin and Langseth teaches plural marketing campaigns (Benthin) and Langseth teaches delivery of the offers over a plurality of channels, each channel being different types of channels.

8. With respect to claim 18, Applicant argues that the Official Notice taken doesn't address "determining a channel to select based at least in part on a user's response to an offer" The Examiner disagrees with Applicant because the Official Notice pertains to how well the user responds to offers. For example, if an ad is presented on the radio and the user buy the products advertised on the radio then the advertisers will know that the radio is a good channel to present their ads. Therefore, contrary to Applicant's

arguments, the Official Notice taken pertains to measuring how the user's respond to ads in order to determine if the channel in which the ad was delivered was effective.

9. With respect to Applicant's amendment pertaining to amended claims 23-24, see rejection above.

10. With respect to claims 21-22 and 37-38, Applicant argues that the Official Notice taken on the claims do not address taking into account or consideration monetary and capacity costs of the channel in which the offers are delivered. The Examiner disagrees with Applicant because as stated in the Official notice, it is well old and well known to take into account the cost associated with the channel being used. As stated in the rejection above, CNN will have a higher operating cost than a smaller channel and this is taken into account before a selection is made. In addition, the Examiner wants to point out that applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

11. With respect to claims 28-29, Applicant argues that Benthin doesn't teach the newly amendment which includes "tracking activities of the targeted individuals to whom the offers were targeted according to the channels over which the offers were sent and determining by the one or more computers an effectiveness of the plurality of offers by matching information received from sources of activity related information to the offers" and "delivering through channels selected from the plurality of channel a

sequence of subsequent offers to individuals based on their tracked activities." See rejection analysis above.

12. Appellant argues that Benthin only describes different operations of a system for managing marketing campaign but doesn't teach a time based rule that instates offers, for example either in the form of a direct rule, a triggered rule or a staged rule. The Examiner first of all wants to point out that "time based rules" is broader than "clock based rules". Time based could be related to event based rules. Benthin clearly teaches different times to present the offers such as certain offers are presented right away, equivalent to Applicant's direct rule (i.e. specify the content to be automatically present the customer on paragraph 0031), other offers are presented based on the timing of certain conditions, such as the user clicking on certain ads, equivalent to Applicant's triggered rule (i.e. clicking on a link on paragraph 0024) and in addition certain offers presented in stages such as building a customer profile and then presenting different offers to the customers, equivalent to Appellant's staged rule (i.e. offers based on customer's profile, paragraph 0024). Therefore contrary to Appellant's arguments Benthin teaches time based rule that instates offers, for example either in the form of a direct rule, a triggered rule or a staged rule.

Point of contact

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RAQUEL ALVAREZ whose telephone number is (571)272-6715. The examiner can normally be reached on 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Namrata (Pinky) Boveja can be reached on (571)272-8105. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Raquel Alvarez/
Primary Examiner, Art Unit 3682

Raquel Alvarez
Primary Examiner
Art Unit 3682

R.A.
5/16/2011